

RAVEN & KOLBE, LLP
Keith A. Raven, Esq. (KR-8086)
Attorneys for Defendants
RALF H. COLEMAN and
WESTERN EXPRESS, INC.
126 East 56th Street, Suite 202
New York, New York 10022
(212) 759-7466

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X	
VINICIUS T. DEFARIA,	: Civil No.: -cv-
	:
Plaintiff(s),	: <u>NOTICE OF REMOVAL</u>
	:
-against-	:
	:
RALF H. COLEMAN and WESTERN	:
EXPRESS, INC.,	:
	:
Defendant(s).	:
----- X	

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PLEASE TAKE NOTICE defendants, RALF H. COLEMAN and WESTERN EXPRESS, INC., by and through their undersigned counsel, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, respectfully submit this Notice of Removal of this action from the Supreme Court of New York, County of Westchester, in which this action is pending, to the United States District Court for the Southern District of New York, being the district embracing the place where the action is pending. In support of this Notice of Removal, defendants state as follows:

1. On or about February 9, 2022, plaintiff filed a lawsuit in the Supreme Court of the State of New York, County of Westchester, under Index No.: 56293/2022. A true and complete copy of plaintiff's Summons and Verified Complaint is attached hereto and made a part hereof as

Exhibit “A”.

2. Plaintiff’s Summons and Verified Complaint was served on defendant, WESTERN EXPRESS, INC., via Secretary of State of New York on or about February 15, 2022.

3. Plaintiff, VINICIUS T. DEFARIA, is a resident and domiciliary of the County of Westchester, in the State of New York.

4. Defendant, RALF H. COLEMAN, is a resident and domiciliary of the State of Texas.

5. Defendant, WESTERN EXPRESS, INC., is a Tennessee corporation.

6. A copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of the State of New York, County of Westchester, and served on all parties as required by 28 U.S.C. §1446(d).

7. This Court has original jurisdiction over this action because there is complete diversity between the parties under 28 U.S.C. §1332(a), and this action is removable to this Court pursuant to 28 U.S.C. §1441(a)-(b).

8. There is complete diversity of citizenship between the plaintiff and the defendants in this action because the plaintiff is a resident of the County of Westchester, in the State of New York; and, defendants are citizens of the State of Texas and State of Tennessee, see Exhibit A respectively.

9. Furthermore, the amount in controversy exceeds \$75,000, exclusive of interests, costs and attorneys fee, which is based upon select copies of plaintiff’s medical records.

10. This Notice of Removal is timely filed in that the Notice of Removal was filed within thirty (30) days of defendants first receiving a copy of plaintiff’s Summons and Complaint and select copies of plaintiff’s medical records.

11. No prior application for the same or similar relief has been made to this or any

other Court.

WHEREFORE, defendants, RALF H. COLEMAN and WESTERN EXPRESS, INC., respectfully request that this action be removed from the Supreme Court of the State of New York, County of Westchester, to this Honorable Court, and that this Court assume jurisdiction of this action and issue such further orders and processes as may be necessary to bring before it all parties necessary for the trial.

Dated: March 2, 2022
New York, New York

RAVEN & KOLBE, LLP
Attorneys for Defendants
RALF H. COLEMAN and
WESTERN EXPRESS, INC.

By: /s/ Keith A. Raven
KEITH A. RAVEN (KR-8086)

TO:

HACH & ROSE, LLP
Attorneys for Plaintiff
VINICIUS T. DEFARIA
112 Madison Avenue, 10th Floor
New York, New York 10016
Tel.: (212) 779-0057
Fax (212) 779-0028
Michael A Rose, Esq.
info@hachroselaw.com
Andrew M. Laskin, Esq.
alaskin@hachroselaw.com

EXHIBIT “A”

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

-----X
 VINICIUS T. DEFARIA,

Plaintiff,

Index No:

-against-

SUMMONS

RALF H. COLEMAN and WESTERN EXPRESS INC,

Defendants.

Basis of Venue:
 Place of occurrence

-----X
 To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Place of occurrence: Interstate 95

Dated: New York, New York
 February 9, 2022

Yours, etc.

Andrew M. Laskin
 Andrew M. Laskin, Esq.
 HACH & ROSE, LLP
 Attorney for Plaintiff
 112 Madison Avenue, 10th Floor
 New York, New York 10016
 T.212.779.0057
 F.212.779.0028

TO:

RALF H. COLEMAN
 806 South Tyler Street
 Gladewater, TX 75647

WESTERN EXPRESS INC
 7135 Centennial Place
 Nashville, TN 37209

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
VINICIUS T. DEFARIA,

Index No:

Plaintiff,

-against-

VERIFIED COMPLAINT

RALF H. COLEMAN and WESTERN EXPRESS INC,

Defendants.
-----X

Plaintiff, VINICIUS T. DEFARIA, by his attorneys, HACH & ROSE, LLP, as and for a cause of
action allege upon information and belief as follows:

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF**

1. On or about June 30, 2021, and at all times herein mentioned, the Plaintiff, VINICIUS T. DEFARIA, was and still is a resident of the County of Westchester, State of New York;
2. This action falls within one or more of the exceptions set forth in CPLR Section 1602;
3. The cause of action herein arose in the County of Westchester, State of New York;
4. On or about June 30, 2021, and at all times herein mentioned, Defendant, WESTERN EXPRESS INC, was a domestic corporation duly organized and existing under and by virtue of the laws of the State of Tennessee;
5. On or about June 30, 2021, and at all times herein mentioned, Defendant, RALF H. COLEMAN, was a resident of the Counties of Gregg and Upshur, State of Texas;
6. On or about June 30, 2021, and at all times herein mentioned, Defendant, WESTERN EXPRESS INC, was the owner of a 2020 FRHT bearing Tennessee State license plate number K5888HY;
7. On or about June 30, 2021, and at all times herein mentioned, Defendant, WESTERN EXPRESS INC, was the registrant of the aforesaid vehicle;
8. On or about June 30, 2021, and at all times herein mentioned, Defendant, RALF H. COLEMAN, operated the aforesaid motor vehicle, bearing license plate number K5888HY;

9. On or about June 30, 2021, and at all times herein mentioned, Defendant, RALF H. COLEMAN, controlled the aforesaid motor vehicle;
10. On or about June 30, 2021, and at all times herein mentioned, Defendant, RALF H. COLEMAN, operated the aforesaid motor vehicle with the permission of the owner, Defendant, WESTERN EXPRESS INC;
11. On or about, June 30, 2021, and at all times herein mentioned, Interstate 95, was a public roadway and/or thoroughfares;
12. On or about, June 30, 2021, while in the course of his employment Plaintiff, VINICIUS T. DEFARIA, was lawfully upon the aforementioned roadway in a closed work zone when Defendant, RALF H. COLEMAN, drove into the closed work zone, striking and injuring the Plaintiff.
13. As a result of the occurrence, Plaintiff, VINICIUS T. DEFARIA, was seriously injured;
14. That the aforesaid occurrence was caused wholly and solely by reason of the negligence of the Defendants without any fault or negligence on the part of the Plaintiff contributing thereto;
15. That the negligence of the Defendants consisted of, but not limited to, operating the aforesaid motor vehicle in a negligent, reckless and careless manner; in failing to keep the aforesaid motor vehicle under reasonable and proper control; in failing to operate the aforesaid motor vehicle with due regard for the safety of the public and others; in failing to keep a proper lookout, in failing to observe what was available to be observed; in operating the aforesaid motor vehicle in a manner contrary to, and in violation of, the statutes, ordinances, rules and regulations applicable and in existence on the date of the occurrence; in failing to provide and/or make prompt and timely use of adequate and efficient brake and steering mechanisms; in operating the aforesaid motor vehicle in such a negligent, careless and reckless manner as to precipitate the aforesaid occurrence; in failing to take defensive action; and in failing to warn of the approach of the aforesaid motor vehicle, in going through a red light;
16. That by reason of the foregoing, Plaintiff, VINICIUS T. DEFARIA , has sustained a serious injury as defined by Section 5102 of the Insurance Law;

17. That by reason of the foregoing, Plaintiff, VINICIUS T. DEFARIA, has been damaged in an amount exceeding the jurisdictional limits of all lower courts of the State of New York.

WHEREFORE, Plaintiff, Vinicius Defaria, demands judgment against the Defendants herein on The First Cause of Action in an amount exceeding the jurisdictional limits of all lower courts of the State of New York, together with the interests, costs and disbursements of this action.

Dated: New York, New York
February 9, 2022

Yours, etc.

Andrew M. Laskin
Andrew M. Laskin, Esq.
HACH & ROSE, LLP
Attorney for Plaintiff
112 Madison Avenue, 10th Floor
New York, New York 10016
T.212.779.0057
F.212.779.0028

STATE OF NEW YORK }
 } ss.
COUNTY OF NEW YORK }

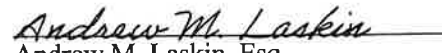
Andrew M. Laskin, being duly sworn, deposes and says:

That deponent is a member with HACH & ROSE, L.L.P., attorneys for Plaintiff, in the within action; that the deponent has read the foregoing **SUMMONS AND COMPLAINT** and knows the contents thereof; that the same is true to deponents knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true and the reasons that this verification is not made by the Plaintiff(s) and is made by deponent is that Plaintiff(s) does/do not reside in the county where the attorney for the Plaintiff(s) have their office.

Deponent further says that the source of deponent's information and the grounds of deponent's beliefs as to all matters not stated upon deponent's knowledge are from investigation made on behalf of Plaintiff(s).

DATED: NEW YORK, NEW YORK
 February 9, 2022

Yours, etc.


Andrew M. Laskin, Esq.
HACH & ROSE, LLP
Attorney for Plaintiff
112 Madison Avenue, 10th Floor
New York, New York 10016
T.212.779.0057
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

-----X
 VINICIUS T. DEFARIA,

Index No.

Plaintiff,

-against-

RALF H. COLEMAN and WESTERN EXPRESS INC,

Defendants.

-----X

**NOTICE OF COMMENCEMENT OF ACTION
 SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@couns.state.ny.us.

Dated: New York, New York
 February 9, 2022

Andrew M. Laskin

Andrew M. Laskin, Esq.
 HACH & ROSE, LLP
 Attorney for Plaintiff
 112 Madison Avenue, 10th Floor
 New York, New York 10016
 T.212.779.0057
 F.212.779.0028

FILED: WESTCHESTER COUNTY CLERK 02/09/2022 01:36 PM

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 02/09/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

VINICIUS T. DEFARIA,

Plaintiff,

-against-

RALF H. COLEMAN and WESTERN EXPRESS INC,

Defendants.

SUMMONS AND COMPLAINT

HACH & ROSE, LLP

Attorneys for Plaintiff

VINICIUS T. DEFARIA

112 Madison Avenue, 10th Floor

New York, NY 10016

Tel. (212) 779-0057

Fax. (212) 779-0028

AFFIDAVIT OF SERVICE BY ECF AND MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Nelida M. Lamboy-Perez, being duly sworn, deposes and says:

That she is an employee in the office of RAVEN & KOLBE, LLP, attorneys herein; that deponent is not a party to the action or proceeding, is over eighteen (18) years of age, and resides in New York; and, that on March 4, 2022, she filed via ECF and served the within copy of the **NOTICE OF REMOVAL AND EXHIBIT** upon:

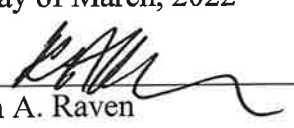
HACH & ROSE, LLP
112 Madison Avenue, 10th Floor
New York, New York 10016
Michael A Rose, Esq.
info@hachroselaw.com
Andrew M. Laskin, Esq.
alaskin@hachroselaw.com

by depositing a true copy of the same securely in a postpaid wrapper, in a Post Office Box regularly maintained by the United States Government directed to the above-mentioned parties at their respective address above, that this being the address within the State designated by them for the purpose upon the preceding papers in this action or the place where they then kept an office, between which place, there then was and now is a regular communication by mail.



NELIDA M. LAMBOY-PEREZ

Sworn to before me this
4th day of March, 2022



Keith A. Raven
Notary Public, State of New York
Reg. No. 02RA6011105
Commission Expires 08-03-23